



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 22, 1992

Mr. Larry W. Schenk
City Attorney
City of Longview
P. O. Box 1952
Longview, Texas 75606-1952

OR92-334

Dear Mr. Schenk:

The City of Longview asks whether certain police internal affairs investigation records are subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 16158.

The City of Longview has received a request pursuant to the Open Records Act for all documents concerning the "use of force to stop a car occupied by Kevin Jones and Tiffany Wallace on or about March 30, 1992, and any disciplinary or administrative action taken against police department employees." You have submitted for our review documents concerning the internal affairs investigation of officers Paul Ely and Juan Roberson and their responsibility for the March 30, 1992 incident. You have marked various portions of the documents which you contend are excepted from required public disclosure by Open Records Act sections 3(a)(2), 3(a)(8), and 3(a)(11).

Open Records Act section 3(a) states that all information in the possession of a governmental body is public information, unless the information meets one of the express exceptions of the Act. Under section 3(a)(2) information in personnel files is excepted from required public disclosure, where disclosure would result in a "clearly unwarranted invasion of personal privacy." Information is protected by common-law privacy, and subject to the section 3(a)(2) exception, if 1) it contains highly intimate or embarrassing facts about a person's private affairs the publication of which would be highly objectionable to a reasonable person, and 2) the information is not of legitimate public concern. Open Records Decision No. 545 (1990) at 2. We have concluded that none of the information contained in the records submitted for our review is highly intimate or embarrassing. Moreover, the public has a legitimate interest in matters concerning the conduct of their police

officers. Thus the section 3(a)(2) exception does not apply. See Open Records Decision Nos. 418 (1984); 405, 400 (1983); 350 (1982); 208 (1978).

Open Record Act section 3(a)(8) excepts from required public disclosure

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

Under section 3(a)(8) information may be withheld from an inactive criminal investigatory file only if disclosure will unduly interfere with law enforcement or crime prevention. Open Records Decision No. 397 (1983). You have not provided us with any reason to believe that the release of the requested information would hinder law enforcement efforts; accordingly, section 3(a)(8) does not apply.

Section 3(a)(11) excepts from required public disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." The test under section 3(a)(11) is whether inter-agency or intra-agency information consists of advice, opinion, or recommendation that is used in the deliberative process. Open Records Decision No. 574 (1990). Facts and written observations of facts and events, when such information is separable from advice, opinion, or recommendation, may not be withheld under section 3(a)(11). *Id.*; see also Open Records Decision No. 213 (1978).

In the documents submitted for our review you have redacted certain statements by Officer Ely concerning his state of mind and his attitude concerning the use of force. Doc. 1 at 2-3, 6; Doc. 3 at 1-3. You have also redacted a portion of Officer Roberson's statement concerning his perception of the subject events. Doc. 1 at 4. We understand that at a certain point the line between fact and opinion is tenuous. However, we believe that this redacted information describes the officers' perceptions and observations, and therefore is either factual or not the type of opinion excepted by section 3(a)(11).

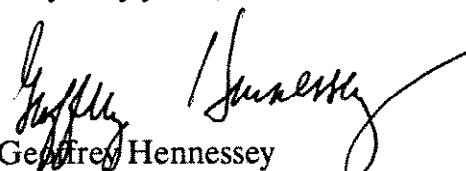
You have also redacted certain portions of the internal affairs report stating the department's policy concerning the use of force, the department's ultimate findings concerning Officer Ely's and Officer Roberson's conduct on March 30, 1992, and the department's disciplinary sanctions. Doc. 1 at 7-9; Doc. 23 at 1. Open

Records Act section 6(10) expressly states that agency or departmental rules and statements of general policy are public information. Also, the ultimate findings of the disciplinary review board and the disciplinary measures imposed are not excepted under Open Record Act section 3(a)(11). See Open Records Decision Nos. 350, 315 (1981). This information should be disclosed.

You have also redacted the summary of the department's ballistic expert concerning the referenced events. Doc. 1 at 6. We conclude that this expert opinion is excepted by section 3(a)(11).

In sum, we conclude that the documents furnished for our review are not excepted from required public disclosure under the Act, with the exception of the summary of the department's expert ballistics report which may be withheld. Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-334.

Very truly yours,


Geoffrey Hennessey
Assistant Attorney General
Opinions Committee

GH/lmm

Ref.: ID# 16158
ID# 16167

cc: Mr. James Cullen
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